

No. 9/5/84-6Lab/2801.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Bhiwani Textile Mills, Bhiwani :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 113 of 1978

between

SHRI RAM JIWAN, WORKMAN AND THE MANAGEMENT OF M/S BHIWANI TEXTILE MILLS, BHIWANI

Present.—

Shri S. S. Gupta, A.R. for the workman.

Shri B. R. Ghaiye, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Ram Jiwan and the management of M/s Bhiwani Textile Mills, Bhiwani, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/HSR/23-78/29497, dated 26th June, 1978 :—

Whether the termination of service of Shri Ram Jiwan was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent on permanent basis as Moulder and that he is an I.T.I. trained workman and that the respondent choose to terminate his services abruptly on 6th January, 1978, against which, the workman approached its union, which intervened on behalf of the workman, without any success, and thereafter the workman raised a demand notice and during conciliation proceedings, the management put a plea that the workman was employed for a temporary period only, though he was employed against a permanent post and as such, it is alleged that his termination was an unfair labour practice on the part of the respondent and hence there is a prayer for reinstatement with continuity of service and full back wages.

3. In the detailed reply filed by the respondent, the preliminary objections taken are that the workman was employed for period of three months only, after expiry of which, his services stood terminated automatically and as such, his termination is beyond the scope of section 2 (a) of the Industrial Disputes Act, 1947. On merits also, it admitted that the applicant worked as apprentice with the respondent in the year 1970-71 and thereafter he left the employment of the respondent but again joined on temporary basis in the month of October, 1977 and so, it is alleged that any reference to previous employment is irrelevant. It is further alleged that the workman was employed as a Moulder for a period of three months, who joined his duties on 4th October, 1977, because the management had installed some new machinery in the frame department and so, there was a spurt in the moulding work, which was for a short period and so after the work had been finished, services of the workman stood automatically terminated on 6th January, 1978. So, it is alleged that there was no termination of services as alleged.

4. In the rejoinder filed by the workman, pleas put forth on behalf of the respondent has been controverted.

5. On the pleadings of the parties, the following issues were settled for decision on 17th October, 1978 :—

1. Whether the workman was appointed temporarily ?
2. If issue No. 1 is proved, whether his services stand terminated automatically by lapse of period ?
3. If issue No. 1 and 2 are not proved, whether termination of services of the workman was justified and in order ?
4. Whether the dispute is covered under section 2-A of the I. D. Act ?
5. Relief.

6. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri N. S. Mehta, and MW-2 Shri Karam Singh, Chief Engineer, and the workman appeared as his own witness as WW-1.

7. The learned Authorised Representatives of the parties heard. My findings on the issues framed are as below :—

8. *Issues No. 1 & 2.*—To prove these issues, the management examined MW-1 Shri N. S. Mehta, who stated that application Ex. M-1 was filed by the workman requesting for employment, upon which, endorsement "A" was made by Shri Karam Singh, Chief Engineer and Ex. M-3 is the slip issued to the Time Keeper, for issuing temporary pass for three months to the workman. He further stated that the workman was employed on temporary basis, because erection work of machinery was going on. On this fact, he has been ably corroborated by MW-2 Shri Karam Singh, Chief Engineer. The workman when he appeared as WW-1, stated that he remained employed with the respondent from 2nd January, 1970 to 2nd January, 1972 and thereafter he was re-employed on 5th October, 1977. The factom of his previous employment has not been stated by the workman in the demand notice Ex. WW-1/B and in the Claim Statment filed in the Court. In the same, it is stated that he was employed against a permanent post as a Moulder. Even if version of the workman is believed that he remained employed for about two years in the years 1970-72, even then his re-employment on 5th October, 1970 was definitely for a fixed period of three months, as is evident from the order passed by the Chief Engineer, on the application filed by the workman seeking employment. After gap of years, the workman cannot take advantage of his previous services. I, see no reasons to disbelieve the version of the witnesses produced by the management on the fact that the workman was employed on temporary basis for fixed period of three months. In that behalf authority cited on behalf of the respondent were 1975 (I) LIJ 207 between Crompton Engineering Co. Madras Pvt. Ltd and Additional Labour Court Madras and others. In this authority it was explicitly laid down that termination of services on expiry of fixed period for which the workman was employed, cannot confer a right of reinstatement upon the workman. Similarly in 1970 (32) Indian Factories and Labour Reports 280, it was held that a person employed on probation cannot claim the status of permanent workman automatically unless he so confirmed, though he may have been employed against a permanent post. So, there is no escape from the conclusion that the workman was employed for a fixed period, after expiry of which, his appointment stood automatically terminated. So, both these issues are answered in favour of the management.

9. *Issue No. 3.*—Since issues No. 1 and 2 have gone against the workman, his discharge from service after expiry of fixed period was justified.

10. *Issue No. 4.*—This issue was not pressed at the bar on behalf of the respondent, so, the same goes against the management.

11. In the light of my decision of issues No. 1 & 2, I find that the workman is not entitled to the relief of reinstatement as prayed by him, because his appointment was for a fixed period of three months, after the expiry of which the same stood terminated automatically. The reference is answered and returned accordingly. There is no order as to cost.

Dated : 21st March, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 113/78/544, dated 29th March, 1985.

Forwarded (four copies), to the Secretary, to Government Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/2803.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/S Panchayat Samiti, Hissar-I.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 78 of 80.

Between

SHRI BALBIR SINGH, WORKMAN AND THE MANAGEMENT OF THE PANCHYAT SIMITI,
HISSAR-I.

Shri T.C. Gupta, A.R. for the workman.
Shri Jai Singh, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Balbir Singh and the management of M/s. Panchayat Samiti, Hissar-I. to this Court, for adjudication, —vide Labour Department Gazette Notification No. ID/HSR/14-80/16368, dated 7th April, 1980 :—

Whether the termination of services of Shri Balbir Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. Succintly stated the case of the workman is that he was working as a Tax Collector with the respondent and had applied for leave on medical grounds on 8th April, 1974 for a period of six months and sent the same under postal certificate but was not informed by the respondent as to whether the leave has been granted or not. But on 17th June, 1974 he received a letter from the Executive Officer, Panchayat Samiti, Hissar directing him to hand over charge to Shri Prem Dev, Secretary of the Panchayat Samiti within 3 days was further intimated that his leave application shall be considered after receipt of his service record and that in pursuance of the notice referred to above, he hand over charge to Shri Prem Dev on 22nd June, 1974 and that on 4th October, 1974, on verbal enquiries made by him, he was told by the Executive Officer of the respondent that his leave application shall be considered in routine and that he again sent leave application on 8th May, 1975 and 1st November, 1975 for extension of leave on medical ground and so on 15th March, 1979 he report to the Panchayat Samiti, Hissar-I to resume his duties but was not allowed to do so and again on 17th March, 1974 when he told the officer concerned to allow him to resume his duties, he was handed over letter number 200, dated 15th March, 1976,—vide which, he was intimated that,—vide resolution number 2, dated 9th March, 1976, his resignation has been accepted w.e.f. 9th April, 1974. In view of the above, it is alleged that the respondent choose to keep in abeyance his leave applications for a pretty long time and that the resolution,—vide which, his alleged resignation was accepted is illegal and unfair. In the *inter alia*, it is alleged that since if the era of Internal Emergency, so he could not vice his grivence on pain of dire consequences. It is also alleged that he approached the Shah Commission also. On these grounds, it is alleged that the termination of his services is illegal and unlawful and hence there is a prayer for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, the preliminary objections taken are that the dispute under reference has not been properly espoused by the claimant and further the same is not an industrial dispute and so the reference to this Court is bad in law and further more the respondent is not an "industry" and its employees are governed by the provisions of the Punjab Panchayat Samiti Act, 1961 and further more the claimant has not availed of other efficacious remedies available to him under law and the claim application is not properly verified. On merits, it is alleged that in the application for leave sent by the claimant, there was a prayer for granting the same and in the alternative for acceptance of resignation. It is also admitted that applications were also sent by the claimant later on but since the applicant had resigned voluntarily, there is no question of granting any leave to the applicant.

4. In the rejoinder filed by the claimant, pleas propounded on behalf of the respondent have been controverted and veracity of the allegations made in the Claim Statement has been asserted.

5. On the pleadings of the parties, the following issues were settled for decision on 28th July, 1981:—

1. Whether espousal of the dispute was necessary and the dispute was not legally espoused? If so, to what effect ? OPM.
2. Whether Panchayat Samiti, Hissar-I is not is not an Industry ? OPM.
3. Whether the claim of the claimant is pre-mature as per the reasons given in para 3 & 4 ? OPM.
4. Whether the Executive Officer panchayat Samiti, Hissar-I is a legal entity and can be sued?
5. Whether the statement to claim has not been verified ? If so, to what effect?
6. Whether the termination of services of Shri Bablir Singh was justified and in Order ? If not, to what relief is he entitled ?

6. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri H.R. Bhatia, Executive Officer and MW-2 Shri V.P. Khanna, Enquiry Officer and the workman examined WW-1 Shri Bhim Singh, Head Clerk and himself appeared as WW-2.

7. The learned Authorised Representatives of the parties heard. Both the parties have chosen to place on record written arguments.

8. Since this reference can be disposed of on a law point, I need not discuss the various contentions raised on behalf of the parties or the evidence adduced in support of the same.

9. There is a plea by the respondent that the reference is bad in law on the ground that the claim of the workman has not been properly espoused and further that it is not an industrial dispute. Even these pleas are not relevant for the proper espousal of the reference, because, in my opinion, the real dispute between the parties has not been referred to this Court for adjudication. There is a clear cut plea by the respondent that there was no termination of services of the claimant but the terms of reference are limited to the justification or otherwise of the alleged termination, so the controversy between the parties as emerges after the evidence and from the pleadings of the parties, is entirely different to the one contained in the order of reference. The management has placed on record a photostat copy of the application of the workman dated 8th April, 1974 Ex. WW-1/1,—vide which, the workman has prayed for grant of leave for six months on medical grounds and in the alternative, if the leave cannot be sanctioned for acceptance of his resignation, which the respondent did, vide resolution, dated 9th March, 1976 and the same was accepted retrospectively w.e.f. 9th April, 1974. The validity or otherwise of the same cannot be gone into by this Court, because the controversy in hand is absolutely alien to the terms of reference, which are limited to the extent as to whether termination of services of the claimant was justified or not. I am fortified in my view, on the basis of law laid down in 1984 LLN 297 Sitaram Vishnu Shirodkar and Administrator, Government of Goa and others. In this authority, their Lordships of the Bombay High Court referred to a full Bench judgement of the Delhi High Court in India Tourism Development Corporation New Delhi v/s. Delhi Administration and others. Their Lordships further capiously accepted observations in the said judgement, which can be quoted under in advantage :—

“It is settled law that the jurisdiction of the Labour/Industrial Tribunal in industrial dispute is limited to this point specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference. It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms of the reference except for ancillary matters. Making of an order of reference is undoubtedly an administrative function, but even that is amenable to judicial review in the proceedings under Act. 226 under certain facts and circumstances. An order of reference is open to judicial review if it is shown that the appropriate Government has not applied its mind to the material before it, or has not taken into consideration certain vital facts which it ought to have taken into consideration.... We are of the view that the existence of lockout itself being the real dispute between the management and its workmen, the term of reference proceeds on the assumption that there was lockout with effect from January, 1981. There is a very thin of distinction between closure and a lockout.... The real dispute between the parties was whether there was at all a lockout or whether there was violence by the workmen and for that reason there was suspension of the working of the restaurant with effect from 2nd January, 1981, and whether the closure of the restaurant from 18th February-1981, was proper and for that reason the termination of the services of the workmen was justified and legal. The appropriate Government has failed to take into consideration the entire set of circumstances brought out by the management in the two notices displayed and the replies furnished to the Delhi Administration to come to the conclusion whether it was a lockout or closure. Whether in fact there was a closure or lockout is the real dispute which can more appropriately be determined in industrial adjudication..... The Industrial Tribunal cannot go into that question as the real dispute has not been made the subject-matter of the order of reference.”

A nother authority on the point is 1981 Lab. I.C. 1110 between M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. versus The workmen employed represented by Firestone Tyre Employees Union.

10. I am aware of the settled legal position that there are no fetters upon the powers of the Labour Court to travel behind the terms of reference in matters incidental thereto and ancillary for the decision of the reference but at the same time the Labour Court cannot travel beyond the terms of reference and decide a question, which is absolutely alien to the terms of reference, as in this case. The case of the respondent is that the workman voluntarily submitted his resignation, which was accepted retrospectively w.e.f. 9th April, 1974 and the reference made to this Court is about the justification or otherwise of the alleged termination of the claim. This Court is not aware as to whether any conciliation proceedings were gone through before making a reference to this Court and what was the result of the same, but it can only be presumed that if the same took place, they proved abortive.

11. So, there is no difficulty in holding that the controversy in hand substantially spills beyond the terms of reference and as such this Court cannot adjudicate upon the same in view of the law laid down in the authorities referred to above and as such this reference is bad in law.

12. In view of my aforesaid findings, I need not decide the various issues framed in this case and unnecessarily encumber the record.

13. Before parting with this award, I cannot help in observing that the reference seems to have been made to this Court by the Government of Haryana in mechanical and perfunctory manner without applying its mind as to the real controversy between the parties. I also cannot resist the temptation in observing that an ailing and humble employee of the respondent has been put to unnecessary harassment by the callous and indifferent attitude adopted by the respondent, which choose to sit upon his request for leave and in the alternative for acceptance of his resignation for two long years, because the application filed by the claimant for the same was dated 8th April, 1974 and decision was taken by the respondent on 9th March, 1976 and surprisingly the resignation of the workman was accepted retrospectively w.e.f. 9th April, 1974. Had the respondent been prompt in accepting the resignation of the workman, the workman could have been saved from the mental agony of being in a suspense for two long years and this unnecessary litigation to this Court could have been avoided. There is no order as to cost.

Dated 23rd March, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst No. 78/80/546, dated 29th March, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/2815.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Municipal Committee, Fatehabad (District Hissar).

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 219 of 80

between

SHRI RAMESH CHANDER, WORKMAN AND THE MANAGEMENT OF MUNICIPAL COMMITTEE, FATEHABAD (DISTRICT HISSAR)

Present:

Shri W.C. Mehta, Advocate, for the workman.

Shri Nar Singh Bishnoi, Advocate, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Ramesh Chander and the management of Municipal Committee, Fatehabad (District Hissar), to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/HSR/142-80/57740, dated 3rd October, 1980:—

Whether the termination of services of Shri Ramesh Chander was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as an Octroi Moharrir and was selected for the said appointment after his name was sponsored by the Employment Exchange, Hissar and he was appointed,—vide order passed by the Administrator, Fatehabad, dated 8th December, 1975 and on the death of one Shri Pahlad Rai, Octroi Moharrir, the applicant was appointed on regular basis w.e.f. 25th June, 1976 and that though the work and conduct of the applicant was satisfactory and his superiors were satisfied with his working, the respondent choose to terminate his services abruptly w.e.f. 31st May, 1979 by giving one month's notice pay but without payment of any retrenchment compensation and that the persons junior to the applicant were still in the employment of the respondent and so, it is alleged that his termination was illegal and unlawful and against the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, preliminary objections taken are that the petition is not in proper form, which is barred by limitation and further this Court has no jurisdictional competency to try this matter and that the petition has not been properly signed and verified. On merits, the appointment of the petitioner as Octroi Moharrir is admitted but it is alleged that he was employed on temporary basis against leave vacancy. It is further alleged that since the work and conduct of the petitioner was not satisfactory and as such, he was served with a show cause notice for absenteeism without leave and in that behalf he was served with a show cause notice dated 22nd August, 1978 and the reply furnished by the petitioner on 24th August, 1978 was not found to be satisfactory and so it is alleged that his services were terminated after a proper opportunity of hearing was given to the petitioner.

4. In the rejoinder filed by the workman, he has controverted the validity of the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issue was settled for decision on 22nd December, 1981:—

Whether the termination of services of Shri Ramesh Chander was justified and in order? If not, to what relief is he entitled?

6. The management examined MW-1 Shri Duni Chand Parokar, and the workman appeared as his own witness as WW-1. I have heard their Authorised Representatives and perused the documents on record.

7. On behalf of the workman it was forcefully argued that the respondent had chosen to terminate the services of the workman after he had put in about less than 4 years of service, because the petitioner was appointed on 8th December, 1975 and his services were terminated on 31st May, 1979. It is not the case of the respondent that the services of the petitioner were retrenched he being surplus but the case build up by the respondent is that the work and conduct of the applicant was not satisfactory because he was found absent from duty without leave on 17th August, 1975 when a surprise raid was conducted at 12.30 p.m. at the Bhattu Octroi Post, Fatehabad. Admittedly a show cause notice was issued to the workman about his absence from duty without leave but the workman alleged illness on the said date, but without holding any proper domestic enquiry, the respondent was not justified in terminating the services of the workman in a summary manner, which it did. The workman has admittedly completed more than 240 days of actual work with the respondent on the date his services were terminated and as such the provisions of section 25-F of the Industrial Disputes Act, 1947 would come into play to the rescue of the workman, because without payment of retrenchment compensation, his services could not have been dispensed with by the respondent. The applicant was appointed after regular interview conducted by the Administrator on 8th December, 1975 and the panel of names selected is contained in Ex. MW-1/4, in which the name of the applicant figures at the top. Similarly after demise of another Octroi Moharrir Shri Pahalad Rai on 24th June, 1976, the workman was appointed in this place. So, it cannot be argued on behalf of the respondent that the workman was appointed on temporary basis against a leave vacancy. Even if, that is the case of the respondent, even then, the respondent could not have dispensed with the services of the applicant without payment of retrenchment compensation as envisaged under section 25F of the Industrial Disputes Act, 1947 and if the workman was guilty of any misconduct, the respondent should have held a valid and proper domestic enquiry before terminating his services. Simply because a show cause notice was issued and explanation of the workman was called will not absolve the respondent of its statutory liability to hold domestic enquiry. Under these circumstances, there is no escape from the conclusion that the respondent was not justified in terminating the services of the workman and that the order of termination dated 31st May, 1979 was illegal and void *ab initio*, the same having been passed in flagrant disregard of the provisions of the Industrial Disputes Act, 1947, and as such not sustainable in the eyes of law.

8. In the light of my foregoing discussions, the workman is ordered to be reinstated with continuity of service and full back wages and the reference answered and returned accordingly, without no order as to cost.

Dated 28th March, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 219/80/559, dated 29th March, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.